

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.1486 of 2008

09.08.2018

Between:

M.Dilip Kumar

..Petitioner

and

The Andhra Pradesh State Consumer Disputes Redressal
Commission, Hyderabad and others

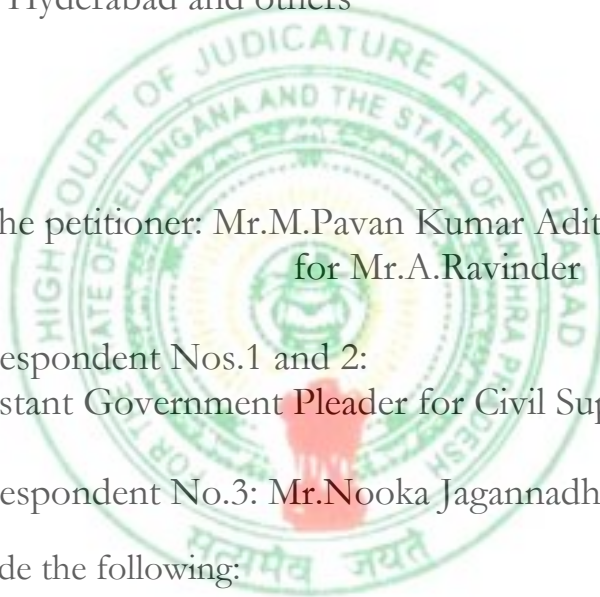
..Respondents

Counsel for the petitioner: Mr.M.Pavan Kumar Aditya
for Mr.A.Ravinder

Counsel for respondent Nos.1 and 2:
Assistant Government Pleader for Civil Supplies (A.P.)

Counsel for respondent No.3: Mr.Nooka Jagannadham

The Court made the following:



ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed feeling aggrieved by order, dated 03.09.2007, whereby respondent No.1 Commission has dismissed R.P.No.83 of 2007, which was filed against order, dated 28.03.2007, in I.A.No.103 of 2005 in C.D.No.92 of 2002, of respondent No.2 *forum*.

2. Brief facts leading to the filing of this writ petition are stated hereunder.

Respondent No.3 raised a Consumer Dispute before respondent No.2 *forum*, which is registered as C.D.No.62 of 2002, for a direction to respondent Nos.4 to 7 and the petitioner to pay a sum of Rs.83,300/- along with Rs.25,000/- towards damages. The petitioner and respondent Nos.4 to 6 did not appear before respondent No.2 *forum*. However, by its order, dated 03.03.2004, respondent No.2 *forum* partly allowed the C.D. directing respondent No.4 and the petitioner to pay a sum of Rs.78,000/- to respondent No.3 along with interest at 12% per annum from 10.10.1999 till the date of realization, with joint and several liability. The petitioner filed I.A.No.103 of 2005 in the C.D. seeking condonation of delay and also setting aside the aforementioned order of respondent No.2

forum by invoking the provisions of Order IX Rule 13 C.P.C. and Section 5 of the Limitation Act, 1963. This I.A. was dismissed on both the grounds that it was belated and was also not maintainable. Against the said order, the petitioner filed R.P.No.83 of 2007, which was dismissed by respondent No.1 Commission mainly on the ground that the I.A. filed by the petitioner before respondent No.2 *forum* was not maintainable as the latter disposed of C.D.No.62 of 2002 on merits. Feeling aggrieved by the said order, the petitioner filed this writ petition.

3. We have heard Mr.M.Pavan Kumar Aditya, learned counsel representing Mr.A.Ravinder, learned counsel for the petitioner, learned Assistant Government Pleader for Civil Supplies (A.P.) appearing for respondent Nos.1 and 2 and Mr.Nooka Jagannadham, learned counsel for respondent No.3 and perused the record.

4. From the facts narrated above, it is evident that respondent No.2 *forum* disposed of the C.D. on merits after framing two points. The fact that the petitioner along with respondent Nos.4 to 6 did not appear before respondent No.2 *forum*, would not render the order passed by it an *ex parte* order

and not the one passed on merits. If the petitioner was aggrieved by the said order, he was entitled to avail the remedy of appeal before respondent No.1 Commission under Section 15 of the Consumer Protection Act, 1986 (for short 'the Act'). Evidently, on a wrong advice, the petitioner filed the I.A. for condonation of the delay and setting aside the purported *ex parte* order. Indeed, under the Act, the District Forum and the State Commission had no power of setting aside its own orders. The provisions of the Code of Civil Procedure, 1908, are applicable only to the limited extent of powers as enumerated in Section 13(4) of the Act. Therefore, I.A.No.103 of 2005 filed by the petitioner was wholly misconceived.

5. Even assuming that the District Forum had the power to recall its own order, as respondent No.2 *forum* passed the order on merits *albeit* in the absence of the petitioner, the only remedy available for the petitioner was to file an appeal which was not availed by him. In our opinion, respondent No.2 *forum* rightly dismissed I.A.No.103 of 2005 and respondent No.1 Commission was also right in dismissing R.P.No.83 of 2007 as respondent Nos.1 and 2 are not vested with the power of setting aside its own orders.

6. On the analysis as above, the Writ Petition is dismissed. This order, however, will not preclude the petitioner from availing the appropriate legal remedy to question order, dated 03.03.2004, in C.D.No.62 of 2002 of respondent No.2 *forum* subject to limitation.

7. As a sequel to dismissal of the Writ Petition, interim stay, dated 09.04.2008, in W.P.M.P.No.1775 of 2008 is vacated and W.P.M.P.No.1775 of 2008 filed by the petitioner for interim relief stands dismissed as infructuous.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

09th August, 2018
GHN

